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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
AT SEATTLE

9 SAMUEL HELLER, an individual,

10 Plaintiff,

11 v.

12 ELASTICSEARCH, INC., a Delaware
13 corporation,

14 Defendant.

No. 2:19-cv-02021 RSM

STIPULATED PROTECTIVE ORDER

15 PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties hereby
18 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
19 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
20 protection on all disclosures or responses to discovery, the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to confidential
22 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
23 confidential information under seal.

24 2. “CONFIDENTIAL” MATERIAL

25 “Confidential” material shall include the following documents and tangible things
26 produced or otherwise exchanged:

STIPULATED PROTECTIVE ORDER - 1
(Cause No. 2:19-cv-02021 RSM)

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone 206.624.0900

- 1 a) The financial status of Plaintiff and/or Defendant, including but not limited to any non-
2 public financial information such as customer information; audits; contracts;
3 investigations; tax records; profit and loss statements; accounting documents; reports;
4 assessments; business and contractual relationships; business or strategic plans and internal
5 cost, budget, productivity, and revenue-tracking reporting information; and investigations
6 and statements related to the same, excluding any such documents already in the public
7 domain, *e.g.*, federal and state income tax returns and certified financial statements;
- 8 b) Documents pertaining to current or former employees of Defendant, including and in
9 addition to Plaintiff, in which such person(s) might have a reasonable expectation of
10 privacy, such as personnel records and files that contain personal, family, or financial
11 information; disciplinary history; performance evaluations; investigations or statements
12 related to the same, or other documents/files which are reasonably deemed confidential by
13 one or more parties;
- 14 c) Protected Health Information (“PHI”), including information defined as PHI by the Health
15 Insurance Portability and Accountability Act (“HIPAA”); medical information of Plaintiff
16 or third parties, such as medical records, medical treatment, medical diagnoses, and drug
17 recommendations or prescriptions; medical billing information; and investigations and
18 statements to the extent they include the same;
- 19 d) Trade secrets of a party or non-party;
- 20 e) Information protected from disclosure by statute or other legal obligations; and
- 21 f) Information or documents obtained from third parties falling into the foregoing categories.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential material (as
24 defined above), but also (1) any information copied or extracted from confidential material; (2) all
25 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
26 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in
2 the public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
5 or produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
7 categories of persons and under the conditions described in this agreement. Confidential material
8 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
9 that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
11 by the court or permitted in writing by the designating party, a receiving party may disclose any
12 confidential material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
17 agree that a particular document or material produced is for Attorney's Eyes Only and is so
18 designated;

19 (c) any expert, consultant, or mediator to whom disclosure is reasonably
20 necessary for this litigation and who has signed the "Acknowledgment and Agreement to Be
21 Bound" (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication of
24 confidential material, provided that counsel for the party retaining the copy or imaging service
25 instructs the service not to disclose any confidential material to third parties and to immediately
26 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party,
11 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
12 remove the confidential designation, whether the document can be redacted, or whether a motion
13 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
14 designating party must identify the basis for sealing the specific confidential information at issue,
15 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
16 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
17 the standards that will be applied when a party seeks permission from the court to file material
18 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
19 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
20 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
21 the strong presumption of public access to the Court’s files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
24 or non-party that designates information or items for protection under this agreement must take
25 care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
7 and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated for
9 protection do not qualify for protection, the designating party must promptly notify all other parties
10 that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, disclosure or discovery material that qualifies for protection under this agreement must
14 be clearly so designated before or when the material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
17 the designating party must affix the word "CONFIDENTIAL" to each page that contains
18 confidential material.

19 (b) Testimony given in deposition or in other pretrial proceedings: the parties
20 and any participating non-parties must identify on the record, during the deposition or other pretrial
21 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
22 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
23 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
24 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
25 at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is treated
9 in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding confidential
19 designations or for a protective order must include a certification, in the motion or in a declaration
20 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
21 affected parties in an effort to resolve the dispute without court action. The certification must list
22 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
23 to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under Local
26 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of

persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order or
7 agreement that provides for production without prior privilege review. The parties agree to the
8 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON-TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts and
12 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

13 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
14 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
16 product, even if such materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a
18 designating party agrees otherwise in writing or a court orders otherwise.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: February 27, 2020

ARETE LAW GROUP

21 s/Jonah O. Harrison (via email
22 authorization)

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Attorneys for Plaintiff

1
2 DATED: February 27, 2020

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12 Attorneys for Defendant

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
15 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
16 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
17 documents, including the attorney-client privilege, attorney work-product protection, or any other
18 privilege or protection recognized by law.

19 DATED this 28th day of February 2020.

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22 RICARDO S. MARTINEZ

23 CHIEF UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Heller v. ElasticSearch, Inc.*, No. 2:19-cv-02021 RSM.. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject to
11 this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____